



COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

1000 Washington Street, Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
TTY/TDD (617) 521-7490
<http://www.mass.gov/doi>

DEVAL L. PATRICK
GOVERNOR

GREGORY BIALECKI
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

BARBARA ANTHONY
UNDERSECRETARY

JOSEPH G. MURPHY
COMMISSIONER OF INSURANCE

Division of Insurance, Petitioner

§.

Jorge A. Pena, Respondent

Docket No. E2014-07

**Decision on Petitioner's Motion
For Summary Decision**

On April 23, 2014, the Division of Insurance (“Division”) filed an Order to Show Cause (“OTSC”) against Jorge A. Pena (“Pena”) who was, until October 15, 2013, licensed as a non-resident Massachusetts insurance producer.¹ In the OTSC, the Division alleges that Pena submitted to the Division an application for an individual insurance producer’s license dated September 5, 2008, on which he answered “no” to a question asking about his criminal history. Pena had, however, pleaded *nolo contendere* in Florida in 1997 to four felony counts involving forgery and the unauthorized use of a credit card. On November 15, 2010, Pena submitted an application to renew his producer license. On that application he answered “no” to a question asking if he had been involved in any administrative proceeding relating to an occupational license that had not been reported to the Division. Pena, however, had been the subject of 2010 administrative actions in five states, Missouri, North Dakota, New York, Vermont and Virginia, each of which had been resolved before the date of Pena’s renewal application, and none of

¹ The Division alleges that it first licensed Pena as a producer on or about September 26, 2008. The license was cancelled, effective October 15, 2013, for failure to renew.

which had been reported to the Division. On November 15, 2010, the State of Maine revoked his producer license in that state.

The Division alleges that Pena's failure to provide correct information on his license applications supports disciplinary action against him pursuant to Massachusetts General Laws Chapter ("Chapter") 175, §162R (a)(1), (a)(6) and (a)(9). The Division further alleges that Pena never reported any of the administrative actions against him to the Division and that such failure violated Chapter 175, §162V (a). It seeks revocation of Pena's license and orders requiring him to dispose of any insurance-related interests in Massachusetts, prohibiting him from conducting any insurance business in the Commonwealth, and imposing fines for the alleged violations.

The Division served the OTSC on Respondent by first class mail, postage prepaid, addressed to him at his business and mailing address as shown on the Division's licensing records, 1900 NW 44th Street, Pompano Beach, Florida 33064 and his home address as shown on those records, 5240 NW 75th Avenue, Lauderhill, Florida 33319. On June 19, 2014, the Division filed a motion for entry of default and summary decision in its favor against Pena for failure to answer the OTSC. It also provided a new residential and mailing address for Pena in Coral Springs, Florida that it had obtained from a National Association of Insurance Commissioners ("NAIC") Licensing Report dated June 18, 2014.

An order, issued on June 23, 2014 instructed Pena to file any written response to the Division's motion by July 18, 2014 and scheduled a hearing on the motion for July 25, 2014. The order was sent to Pena by certified mail at his business and mailing address as shown on the Division's licensing records and at the new residential and mailing address that the Division had obtained from the NAIC. The order was also sent to Pena at each of those addresses by regular United States mail, postage prepaid. The certified mail sent to Pena at his new residential and mailing address was returned to the Division market "unclaimed." The regular mail sent to that address was not returned. Pena did not respond to the Division's motion and did not appear at the July 25 hearing. Matthew Burke, Esq., counsel to the Division, stated that he had not been contacted by Pena or by any person purporting to represent him in this matter.

Finding of Default

On the basis of the record before me, I conclude that the Division took appropriate actions to ensure proper service, and that sufficient service was made. The OTSC was sent by first-class mail to Pena's business and mailing address, and to his residential address, all as

shown on the Division's records. The mailing to the residential address was returned to the Division; the OTSC sent to Pena's business address was presumably received. The Post Office returned to the Division the order scheduling the July 25, 2014 hearing that was sent by certified mail to Pena's Pompano Beach, Florida address; the first class mail sent to that address was not returned. The documents sent to Pena's new residential and mailing address were not returned.

I conclude that Pena's failure to answer the OTSC or to respond to the Division's motion, and his failure to appear at the hearing warrant a finding that he is in default. By his default, Pena has waived his right to proceed further with an evidentiary hearing in this case and I may consider the Division's motion for summary decision based on the record. That record consists of the OTSC and the nine exhibits attached to it, documenting Pena's criminal record and the administrative actions against him in Missouri, North Dakota, New York, Vermont, Virginia and Maine.

Findings of Fact

Based on my review of the record, I make the following findings of fact.

1. Pena submitted an application for an individual insurance producer license to the Division on or about September 5, 2008.
2. Pena answered No to Question 1 on the Background Information section of the application, which asks about the applicant's criminal history.
3. Pena had pleaded *nolo contendere* to four felony counts relating to forgery, uttering, and fraudulent use of a credit card in Florida in 1997 and was, among other things, placed on probation for two years beginning in 1998.
4. The Division licensed Pena as an insurance producer on September 26, 2008.
5. Pena submitted an application to renew his individual insurance producer license on or about November 15, 2010.
6. Pena answered No to Question 2 on that application that asks whether, since his last application, the applicant has been involved in an administrative proceeding regarding any professional or occupational license.
7. On February 26, 2010, the Missouri Department of Insurance settled an administrative action it had taken against Pena because of his false answer to the question on the Missouri producer license application about his criminal history.
8. On May 25, 2010, the North Dakota Insurance Department revoked Pena's insurance producer license for his false answer to his 2008 application for a North Dakota insurance producer license.
9. On July 19, 2010, the New York State Insurance Department settled an administrative action it had taken against Pena because of his failure to report criminal prosecutions to New York, in violation of its insurance laws.
10. On July 30, 2010, the Vermont Department of Banking, Insurance, Securities and Health Care initiated an administrative action against Pena seeking to revoke his Vermont insurance producer license; it revoked his license on September 10, 2010.

11. On October 22, 2010, the State Corporation Commission of the Commonwealth of Virginia settled an administrative action it had taken against Pena for failing to report the Missouri administrative action and providing materially incorrect information in his Virginia insurance producer license application.
12. On November 15, 2010, the Maine Bureau of Insurance notified Pena that it had denied his request to add an additional authority to his Maine insurance producer license and that, unless he requested a hearing, it would revoke that license, effective December 28, 2010, for failure to disclose his criminal history on his application for a Maine insurance producer license and failure to report the North Dakota and New York administrative actions.
13. Pena's Maine insurance producer license was revoked as of December 28, 2010.
14. Pena did not report the administrative actions taken by Missouri, North Dakota, New York, Vermont, Virginia or Maine to the Division.
15. Pena failed to renew his producer license and, for that reason, it terminated by operation of law, effective October 15, 2013.

Analysis and Conclusions of Law

801 CMR 1.01(7)(h) permits a party to move for summary decision when, in its opinion, there is no genuine issue of fact relating to a claim and it is entitled to prevail as a matter of law. Pena has not contested the factual allegations in the OTSC or offered any defense to the Division's claims for relief. Although Pena's Massachusetts insurance producer license lapsed by operation of law in 2013, the Commissioner, pursuant to Chapter 175, §162R (e) retains the authority to enforce against him the provisions of Chapter 175, §§162H through 162X and Chapter 176D.

Chapter 175, §§162G through 162X, sets out, among other things, the requirements for obtaining and maintaining a Massachusetts insurance producer license. Chapter 175, §162R (a) specifies fourteen grounds on which the Commissioner of Insurance ("Commissioner") may suspend or revoke a producer's license. The Division identifies subsections §162R (a)(1), (a)(6) and (a)(9) as grounds for revocation of Pena's license, as well as failure to comply with Chapter 175 §162V(a)(1), a statute requiring a producer to report to the Commissioner any administrative proceedings in any jurisdiction within 30 days of the final disposition of the matter.

Subsection 162R (a)(1), in pertinent part, supports disciplinary against a licensee for providing incorrect, misleading, incomplete or materially untrue information on the license application. Pena failed to disclose his criminal record on his 2008 insurance producer license application and the administrative actions against him on his 2010 renewal application. I find

that the record fully supports the Division's argument that Pena's insurance producer license should be revoked pursuant to subsection 162R (a)(1).

Subsection 162R (a)(6) supports disciplinary action against a licensee for having been convicted of a felony. The definition of "convicted" on the insurance producer license application includes having entered a plea of *nolo contendere* or having been given probation, a suspended sentence, or a fine. According to the records of the Second Judicial Circuit Court for Leon County, Florida, on April 2, 1998 Pena entered pleas of *nolo contendere* to felony counts of forgery, uttering and fraudulent use of a credit card. The record therefore supports the Division's argument that Pena's criminal record is grounds for revoking his insurance producer license.

Subsection 162R (a)(9) supports disciplinary action against a licensee whose insurance producer license has been denied, suspended, or revoked in any other state. Three of the six administrative actions against Pena resulted in revocation of his insurance producer licenses; one of those actions, by Maine, also denied his request to add an additional authority to his license. The administrative actions by North Dakota, Vermont and Maine revoking Pena's insurance producer licenses in those states fully support the Division's argument that Pena's insurance producer license should be revoked pursuant to subsection 162R (a)(9).

Chapter 175, §162V (a) requires Pena, as a licensed insurance producer, to report to the Commissioner any administrative action taken against him in another jurisdiction within 30 days of the final disposition of the matter. Pena's failure to report the six administrative actions taken against him by Missouri, North Dakota, New York, Vermont, Virginia and Maine to the Commissioner is Division is a violation of Chapter 175, 162V (a). Pena applied to renew his Massachusetts producer license in November 2010. Five of the unreported administrative actions took place earlier that same year. Pena's failure to report these actions allowed him to remain fully qualified to sell insurance to Massachusetts consumers for three years and deprived the Division of an opportunity to reassess his qualifications to hold that license.

I am persuaded that failure to report the administrative actions against an insurance producer to the Division on a timely basis is a serious violation that also warrants revocation of Pena's license. On this record, I find that, in addition to revocation of his license, Pena should be prohibited from transacting any insurance business, directly or indirectly, in Massachusetts, and should be required to dispose of any interest he may have in any insurance business in Massachusetts.

Chapter 175, §162R (a) also permits the Commissioner to levy a civil penalty in accordance with Chapter 176D, §7 for violations of the insurance laws and regulations. The maximum penalty permitted under Chapter 176D, §7 is \$1,000 per violation. I find that the evidence supports a finding that Pena, by his failure to report administrative actions in other jurisdictions to the Commissioner, violated Chapter 175, §162V (a) on six occasions. Pena, by providing incorrect and materially untrue information to the Commissioner about his criminal history on his 2008 insurance producer license application and the administrative actions against him on his 2010 renewal application, twice violated §162R. I will therefore impose a fine for eight statutory violations. Because Pena's acts were serious violations of the laws relating to the regulation of insurance, I impose the maximum fine for each of those violations.

ORDERS

Accordingly, after due notice, hearing and consideration it is

ORDERED: That any and all insurance producer licenses issued to Jorge A. Pena by the Division are hereby revoked; and it is

FURTHER ORDERED: that Jorge A. Pena shall return to the Division any licenses in his possession, custody or control; and it is

FURTHER ORDERED: that Jorge A. Pena is, from the date of this order, prohibited from directly or indirectly transacting any insurance business or acquiring, in any capacity whatsoever, any insurance business in the Commonwealth of Massachusetts; and it is

FURTHER ORDERED: that Jorge A. Pena shall comply with the provisions of Chapter 175, §166B and dispose of any and all interests in Massachusetts as proprietor, partner, stockholder, officer or employee of any licensed insurance producer; and it is

FURTHER ORDERED: that Jorge A. Pena shall pay a fine of Eight Thousand (\$8,000) to the Division within 30 days of the entry of this order.

This decision has been filed this 6th day of August 2014, in the office of the Commissioner of Insurance. A copy shall be sent to Jorge A. Pena by regular first class mail, postage prepaid.

Jean F. Farrington
Presiding Officer

Pursuant to Chapter 26, §7, this decision may be appealed to the Commissioner of Insurance.